

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File Number EB-05-TP-235
Long Pond Baptist Church	)	
Licensee of FM Radio Station WTBH	)	NAL/Acct. No. 200632700003
And Owner of Antenna Structure	)	
ASR # 1204141	)	FRN: 0006149397
Chiefland, Florida	)	

**FORFEITURE ORDER**

**Adopted:** January 31, 2007

**Released:** February 1, 2007

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eleven thousand two hundred dollars (\$11,200) to Long Pond Baptist Church (“Long Pond”), licensee of radio station WTBH (FM) and owner of antenna structure # 1204141, for willful and repeated violation of Section 17.50 of the Commission’s Rules (“Rules”) and for willful violation of Section 73.3527 of the Rules.<sup>1</sup> The noted violations involve Long Pond’s failure to clean and repaint its antenna structure as often as necessary to maintain good visibility and its failure to maintain for public inspection the complete required contents of the station’s public inspection file.

**II. BACKGROUND**

2. On September 13, 2005, agents of the Enforcement Bureau’s Tampa Office conducted an inspection of antenna structure # 1204141. The agents observed that the orange paint on the tower was badly faded and chipped away, revealing significant amounts of the bare tower. The faded orange paint on the uppermost bands was so grey that the orange bands were indistinguishable from the adjacent white bands. The Antenna Structure Registration (“ASR”) for this tower requires that the tower be painted and lighted in accordance with FAA Chapters 1, 3, 11, and 21 in FAA Circular Number 70/7460-1J. Chapter 3 provides that antenna structures shall display alternate bands of aviation orange and white paint, that the bands be equal in width, and approximately one-seventh the height of the structure for towers 700 feet or less.

3. On September 19, 2005, the agents conducted a follow-up inspection of Long Pond’s facilities and antenna structure # 1204141 and observed that the condition of the tower paint was the same as it was during the September 13, 2005 inspection. The agents spoke to the General Manager and owner of WTBH and asked him when the tower was last painted. The General Manager stated it had been five or six years since the tower was painted but that it was supposed to be painted the week before. The General Manager could not provide any invoices, paperwork, or contact information to support his statement showing that he had previously arranged to have the tower painted. The agents requested to inspect station WTBH’s public inspection file. The General Manager was unable to make available the station’s service contour map, political file, the public and broadcasting manual, donor lists, and the local

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<sup>1</sup> 47 C.F.R. §§ 17.50, 73.3527.

public notice announcements.

4. On May 1, 2006, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* to Long Pond in the amount of fourteen thousand dollars (\$14,000) for the apparent willful and repeated violation of Section 17.50 of the Rules and the apparent willful violation of Section 73.3527 of the Rules.<sup>2</sup> Long Pond submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

### III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Long Pond's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>5</sup>

6. Section 17.50 of the Rules states that antenna structures requiring painting shall be cleaned or repainted as often as necessary to maintain good visibility. The registration for antenna structure # 1204141 specifically requires that the tower be painted with alternate bands of aviation orange and white paint and that the bands be equal in width and approximately one-seventh the height of the structure for towers 700 feet or less. At the time of the inspections, the agents observed that the orange paint on the tower was so badly faded and chipped that the orange bands were indistinguishable from the adjacent white bands, thus diminishing the overall visibility of the tower. Based on the evidence before us, we find that Long Pond willfully and repeatedly violated Section 17.50 of the Rules by failing to clean and repaint its antenna structure as often as necessary to maintain good visibility.

7. Citing *Gary M. Schikora and George Horner Trust*,<sup>6</sup> Long Pond argues the forfeiture for the tower painting violation should be cancelled. In the cited case, the tower owner repainted its structure less than 30 days after receipt of a Letter of Inquiry ("LOI") inquiring into the paint status of the tower. Long Pond points out that its antenna structure was repainted slightly over a month after the inspection. It asserts that it should not receive a forfeiture, because the tower owner in *Gary M. Schikora and George Horner Trust* did not receive one. We disagree. In *Gary M. Schikora and George Horner Trust*, the owners owned the structure for less than a year prior to receipt of the LOI. Long Pond, however, was a long-time owner of the structure. Long Pond also admitted that its antenna structure had not been painted in five or six years, so it knew, or should have known, that its structure needed to be repainted prior to the inspection.

8. Long Pond also argues that the forfeiture for the tower painting violation should be reduced, because its case is similar to that in *Crown Communications, Inc.*<sup>7</sup> In that case, however, the tower owner repainted its antenna structure *prior* to being notified of the tower's condition by the Commission and received a reduction based on its good faith efforts to comply with the Rules. According to its response,

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<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632700003 (Enf. Bur., Tampa Office, May 1, 2006) ("*NAL*").

<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>6</sup> *Gary M. Schikora and George Horner Trust*, Forfeiture Order, 20 FCC Rcd 20116 (Enf. Bur. 2005).

<sup>7</sup> *Crown Communications, Inc.*, Forfeiture Order, 19 FCC Rcd 19917 (Enf. Bur. 2004).

“right *after* the inspections, my father did make arrangements to have the tower painted.” Corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>8</sup> Thus, we conclude a reduction based on Long Pond’s good faith efforts to comply with the Rules is not warranted.

9. Section 73.3527(a) of the Rules requires noncommercial educational broadcast stations to maintain for public inspection, a file containing materials listed in that section.<sup>9</sup> The public inspection file is to be maintained at the main studio of the station<sup>10</sup> and be available for public inspection during regular business hours.<sup>11</sup> On September 19, 2005, during regular business hours, the General Manager of station WTBH was unable to make available upon request the following required items: the station’s service contour map, political file, the public and broadcasting manual, donor lists, or local public notice announcements. In its response, Long Pond does not dispute the violation. Based on the evidence, we find that Long Pond willfully violated Section 73.3527 of the Rules by failing to maintain and make available a complete public inspection file.

10. Finally, Long Pond requests a reduction based on its history of compliance with the Rules. We have reviewed Long Pond’s record and conclude a reduction of the forfeiture to \$11,200 based on its history of compliance is appropriate.

11. We have examined Long Pond’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Long Pond willfully and repeatedly violated Section 17.50 of the Rules and willfully violated Section 73.3527 of the Rules. Although cancellation of the proposed monetary forfeiture is not warranted, reduction of the forfeiture amount to \$11,200 is appropriate based on Long Pond’s history of compliance with the Rules.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Long Pond Baptist Church **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eleven thousand two hundred dollars (\$11,200) for violation of Sections 17.50 and 73.3527 of the Rules.<sup>12</sup>

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>13</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate

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<sup>8</sup> See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

<sup>9</sup> 47 C.F.R. § 73.3527(a).

<sup>10</sup> See 47 C.F.R. § 73.3527(b).

<sup>11</sup> See 47 C.F.R. § 73.3527(c)(1).

<sup>12</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.50, 73.3527.

<sup>13</sup> 47 U.S.C. § 504(a).

Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>14</sup>

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Long Pond Baptist Church at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau

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<sup>14</sup> See 47 C.F.R. § 1.1914.